

STATE ENVIRONMENTAL COMMISSION (SEC)
Meeting of November 30, 2004
Division of Wildlife
Reno, Nevada

MEMBERS PRESENT:

Melvin Close, Chairman
Alan Coyner, Vice Chairman
Pete Anderson
Terry Crawforth
Don Henderson
Ira Rackley
Hugh Ricci
Harry Shull
Lewis Dodgion

MEMBERS ABSENT:

Demar Dahl
Joey Villafior

Staff Present:

Susan Gray, Deputy Attorney General
John Walker, Executive Secretary
Nan Paulson, Recording Secretary

Chairman Close called the meeting to order at 10:00 a.m.

READER's NOTE: These are summary minutes of the above references meeting of the State Environmental Commission (SEC). Please contact the SEC [Recording Secretary](#) for a copy of the verbatim minutes of the proceedings (i.e., available in audio format only, analog cassette magnetic tape).

Chairman Close introduced new Commissioner Harry Shull from Las Vegas and asked him to tell everyone a little about himself. Commissioner Shull said he is a principal of a real estate development company and they are planning on building about 300 new homes. He has been a Planning Commissioner for the City of Las Vegas for eight years, and has served as a member of the Board of Director's for the Southern Nevada Home Builders for the last ten years. He's been in the home building business for approximately 35 years.

I. Approval of Minutes from the August 19, 2004 SEC Meeting

On the motion of Commissioner Coyner and a second motion from Commissioner Dodgion, the Commission unanimously voted to approve the minutes, with one exception. The name of the Laxalt Building, in which the meeting was held, was misspelled.

II. SETTLEMENT AGREEMENTS ON AIR QUALITY VIOLATIONS

Mike Yamada, Enforcement Supervisor for the Nevada Division of Environmental Protection's (NDEP) Bureau of Air Quality (BAQ) approached the podium. Mr. Yamada spoke about the settlement agreements for Air Pollution Control violations by the following seven companies:

A. Bolling Construction – Notice of Alleged Violation No. 1820

- B. Hafen Ranch Estates – Notice of Alleged Violation Nos. 1848 - 1849**
- C. Mountain Falls Operations – Notice of Alleged Violation No. 1783**
- D. Newmont Mining – Lone Tree Mine – Notice of Alleged Violation No. 1847**
- E. Sierra Pacific Power Co. – Notice of Alleged Violation Nos. 1842-1845**
- F. Stateline Hotel and Gambling Hall – Notice of Alleged Violation No. 1821**
- G. Terry Group – Notice of Alleged Violation No. 1856**

Commissioner Ricci asked why Bolling Ranch's fine is \$1380.00 and Hafen Ranch Estates' fine is \$2450.00, when they have similar histories. Mike Yamada explained that while they both had three prior violations, Hafen Ranch Estates was operating without a permit.

Commissioner Henderson noted that four of the seven violations were related to violations near Pahump and wanted to know what the cause might be. Mr. Yamada stated that prior to February 2004 when the fine amounts were raised, it was cheaper for companies to violate than to hire a water truck to avoid dust violations. Now, with the higher fines, they are seeing less dust violations than they did in the past.

Commissioner Henderson asked if the BAQ expected the violations to decrease. Mike Yamada added that during their enforcement conferences, they advised builders that fines could go as high as \$10,000.00 per day, which makes it more cost effective to control the dust.

Colleen Cripps, Bureau Chief for the Bureau of Air Quality Planning (BAQP). She confirmed that there is a large dust problem due to non-attainment issues. The local government in Pahump has just adopted new dust control ordinances that go into effect the end of December. The BAQP has been working with the public on this issue to get the word out so the public can understand why this is a problem.

Colleen Cripps added that the BAQP gives Fugitive Dust workshops annually or twice a year for all the developers, people in construction, and realtors in the area. The growth is at such an incredible rate that this has not been worked on before. There has been a position approved for an employee to begin working in Pahump in January. This position will assist the County with the enforcement of their ordinance.

There were no public comments regarding the above settlements. Chairman Close closed the public meeting at 9:20 a.m. A motion was made to approve the settlement agreements, Commissioner Dodgion seconded the motion, and the Commission members unanimously approved.

Air Pollution Control & Air Quality Planning

(1) Petition 2004-27 - Vehicle Emission Testing - Inspection & Maintenance Program: The proposed regulation will clarify and update the Inspection & Maintenance (I/M) provisions of NAC 445B and bring them into alignment with the NRS. The amendments will bring diesel vehicles with a gross vehicle weight rating (GVWR) from 8,500 up to and including 10,000 pounds into the I/M program as per AB 36. It will also align the Clark County I/M program area in the NAC with what is in the Nevada I/M State Implementation Plan as well as clarify which areas are included in the Washoe County I/M program and which are exempt.

This regulation will have an economic effect on selected diesel vehicle owners and fleets. In the emissions testing areas of Washoe and Clark Counties, diesel-powered vehicles with a GVWR noted

above will require an annual test before registering. Each year, Nevada Department of Motor Vehicles (DMV) sets a maximum fee for emissions tests; in 2004 it was \$39.00 in Clark and \$36.00 in Washoe Counties respectively.

There will be no additional costs to the agency (DMV) for enforcement of the proposed regulation, the regulation does not overlap or duplicate any regulations of other state, federal or local agencies, and the regulation is no more stringent than what is established by federal law. Fees collected by the DMV from the emissions testing program are used as specified in NRS 445B.830.

Discussion:

Sig Jaunarajs, Environmental Scientist with BAQ, explained this petition proposes two changes to this portion of the regulation concerning vehicle emission testing (I/M Program). The first change under section one is to keep regulations consistent with the amended statutes – AB 36, which requires that diesel powered vehicles in the 8,500-10,000 pound range be emission tested. Prior to this passage, only vehicles up to 8,500 pounds were required to be tested. This will keep the regulations consistent with the DMV, as they have been testing these vehicles for a year.

The second change is an effort to clarify the geographic stint of the I/M program and bring that regulatory definition closer to the definition found in the State Implementation Plans (SIP), which are the driving documents that require there to be an emission testing program to improve air quality in Washoe County and Clark County. This measure was requested by DMV, the implementing agency.

NOTE: A copy of the outline for Sig Jaunarajs' talk is added as appendix #1 at the end of this document.

Public Comments / SEC Discussions & Staff Responses

Commissioner Henderson asked for clarification of the amendment. Sig explained the definition of "heavy duty motor vehicle" was being changed according to weight, from 8,500 to 10,000 pounds. The 8,500 pound weight is according to statute and is a federal definition. Also, the DMV has a dynamometer machine that is used for the emissions testing verification but it is not made for vehicles over with dual wheels, which are around 10,000 pounds.

Chairman Close asked if there were plans for larger dynamometer to be purchased in the future. Lloyd Nelson, Nevada DMV Services Manager, explained that purchasing a new dynamometer and raising the weight of vehicles to be tested would not be cost effective at this time.

Commissioner Crawford asked about fleet vehicles and the financial impact this might result in. Sig explained that there would be an impact, as many businesses (including governmental) have diesel vehicles within the testing weight range. They are not budgeted for this test, and it would mean the vehicle and an employee would be out of service to have the test performed.

SEC ACTION

Chairman Close asked if there were any comments from the public. There were none so he closed the public meeting. Commissioner Close asked for comments from the members. After no comments, Chairman Close asked for a motion, a motion was made and all were in favor of adopting LCB R125-04.

(2) Petition 2004-29 - Adoption By Reference of Federal Regulations: The Nevada Division of Environmental Protection (NDEP) is proposing to update Nevada Administrative Code (NAC) 445B.221, "Adoption by reference of provisions of federal law and regulations." NDEP is proposing to adopt into State regulation sections of Title 40 of the Code of Federal Regulations (CFR) Part 60, New Source Performance Standards (NSPS), and Part 63, National Emission Standards for Hazardous Air Pollutants (NESHAPs), that have been adopted by the U.S. Environmental Protection Agency (EPA) and published in the Federal Register since July 1, 2003.

The NDEP is delegated the implementation of the federal NSPS and NESHAPs programs relevant in Nevada, however, it is necessary to keep the State's "adoption by reference" regulation up to date so that EPA can continue to delegate the implementation of new rules to the State. NAC 445B.221 currently adopts the appropriate sections of 40 CFR Parts 60 and 63, as they existed on July 1, 2003. These proposed amendments are necessary so that Nevada can request delegation for the implementation of federal NSPS and NESHAPs rules promulgated after July 1, 2003.

This regulation will not have an immediate or long-term adverse effect on business or the public. There will be no additional cost to the agency for enforcement of the proposed regulation and the regulation does not overlap or duplicate any regulations of other state or local agencies, however it does adopt federal regulations from Title 40 of the Code of Federal Regulations, Parts 60 and 63 by reference. The amended regulation is no more stringent than what is established by federal law and it will not increase fees.

Discussions

Greg Remer, Staff Engineer with the NDEP BAQP, explained the proposed changes to the air quality regulations in Petition 2004-29 (Item IV [2] on the Commission's Agenda).

NOTE: A copy of the outline for Mr. Remer's talk is added as appendix #2 at the end of this document.

SEC Discussions & Staff Responses

Chairman Close asked for staff responses, there were none.

Chairman Close opened the meeting for public comments and called Johnathan Brown to the podium.

PUBLIC COMMENTS

Mr. Johnathan Brown, Director of Environmental and Regulatory Affairs for the Nevada Mining Association, and on behalf of the Mining Association and its members, he stated they wish to express their support for the adoption of the temporary regulation.

SEC ACTION

There were no other public comments so Chairman Close closed the public meeting and asked for comments from members. After no comments, Chairman Close asked for a motion. Commissioner Crawford made a motion to adopt Petition 2004-29; Commissioner Shull seconded the motion; all were in favor.

(3) Petition 2004-28 - Visible Emissions - Technical Correction: This regulation proposes certain technical corrections to eliminate cross-references in the Air Pollution Control regulations, i.e., NAC 445B.22017 and 445B.2202 to NAC 445B.22023. These technical corrections will have no substantive effect on the regulated community. The technical changes are needed to comply with Nevada's Applicable State Implementation Plan (ASIP), which ensures that the National Ambient Air Quality Standards are attained and maintained. This amended regulation is necessary as part of the preparation for submitting an updated ASIP to the U.S. EPA by December 31, 2004.

This regulation will not have an immediate or long-term adverse effect on business or the public. There will be no additional cost to the agency for enforcement of the proposed regulation and the regulation does not overlap or duplicate any regulations of other state, federal, or local agencies. The amended regulation is no more stringent than what is established by federal law and it will not increase fees.

Discussion:

Greg Remer, Staff Engineer with the NDEP BAQP explained this petition, also.

NOTE: A copy of Mr. Remer's talk is added as appendix #3 at the end of this document.

Chairman Close asked what uncombined water is. Mr. Remer explained it is steam. Commissioner Dodgion asked how uncombined water would be separated out when doing a visibility opacity check. Greg Remer said one would have to wait for the steam to dissipate if doing an eyeball reading if not using an opacity monitor, which is not effective when looking at steam.

Public Comments

Chairman Close asked for public comments. Johnathan Brown from the Nevada Mining Association expressed his and the Association's support of this petition. There were no other public comments so Chairman Close closed the public meeting and asked for comments from the Commission members.

SEC ACTION

Chairman Close asked for a motion. Commissioner Ricci made the motion to approve temporary regulation, Petition 2004-28, and Commissioner Rackley seconded the motion. All were in favor.

(4) Information Item -- State Implementation Plan (ASIP): Under the federal Clean Air Act of 1970, each state was required to develop an Applicable State Implementation Plan (ASIP) which contained the state regulations necessary to ensure that the National Ambient Air Quality Standards are attained and maintained. The Nevada ASIP was last updated in 1984. The NDEP Meeting Agenda –

State Environmental Commission – 11/30/04 is proposing to update the existing Nevada ASIP by replacing the outdated state regulations in that ASIP with current state regulations, bringing the ASIP into alignment with Nevada's current air pollution control program. The update will be submitted to the U.S. Environmental Protection Agency for approval and adoption into Nevada's ASIP. Although no formal action is needed by the SEC, we will take public comment during this meeting.

Discussion:

Commissioner Dodgion said the EPA has been negligent for years on approving and acting on the ASIP submittals, and he wondered if they were any better. Adele Malone said the EPA is very much on board with the ASIP and would like to be able to put an electronic version on their website. The EPA wants it to be the update ASIP.

Commissioner Dodgion wondered about some regulations that were going to the EPA prior to being approved by the Commission. Mrs. Malone explained there are some provisions that are going to be kept that are not in the NAC, and those are going to the EPA. These have been in the ASIP for a long time, but not in the NAC. There aren't many but they include: excess emissions, and about five that pertain to specific sources, and they cannot be removed from the ASIP because they would relax the SIP and the State is not allowed to relax them.

Commissioner Ricci asked for clarification re: going to the EPA then returning to the Commission. Adele Malone explained a little more, and then gave the podium over to Mike Elges, Bureau Chief of the BAPC for more in-depth details.

Mike Elges added that the BAPC is not certain that these previously adopted provisions, which many have been superseded and/or removed, are absolutely going to be retained in the SIP or not. The BAPC, in an attempt to avoid trying to out-guess the outcome of what the EPA may or may not approve, they felt it was more appropriate to let them make their decisions on those that are already in the approved SIP. If needed at a later date, the BAPC could propose to bring the regulations back into the NAC that may apply. This is an alignment of the documents that should put consistency between the SIP and NAC.

Commissioner Henderson asked what staff's perception is regarding how industry is viewing this plan. Adele Malone said the BAPC has been working closely with industry. They have created The ASIP Working Group, which has representatives of industry. This group meets when there are particular issues to be worked out for mutual agreement. Mrs. Malone said she believes industry is supportive of this document.

Commissioner Crawford asked if Washoe and Clark Counties are involved in this process. Adele Malone said they've been given information items and their comments were requested, but they have not been part of the working group since this does not touch their counties. Commissioner Crawford asked if there is any thought that other counties might come along in the future and assume their own program. Colleen Cripps, Bureau Chief of the BAQP, stepped up to the podium and said they have not heard anything from other counties about that.

Commissioner Dodgion wanted to know about the relationship Washoe and Clark Counties have to the SIP, as he always thought their regulations had to be submitted through the State to EPA so they could become a part of the SIP, otherwise they would not be enforceable by EPA. He wanted clarification

that the BAPC was updating the ASIP, not including Washoe and Clark Counties. Adele Malone confirmed this, adding that those two counties have separate SIPs dealing with specific criteria pollutants that they are not in attainment for. She said they are updating the NAC portion that applies to the attainment areas outside of Washoe and Clark Counties.

Commissioner Ricci asked if the dark gray areas are the only areas might be removed. Adele Malone said those dark areas plus article 254 on page 32 are the only areas that may be removed.

NOTE: A copy of Adele Malone's outline is added as appendix #4 at the end of this document.

PUBLIC COMMENTS:

Chairman Close asked if there were any public comments. There were none.

SEC COMMENTS

Chairman Close said that this item does not need Commission vote for adoption so item #4 did not have a vote taken.

(5) Petition 2004-24 – LCB File No. R136-04: Water Quality Standards, Change in Sampling Locations – Lake Mead & Las Vegas Bay: This proposed regulation will revise NAC445A.195 through NAC445A.197 by redefining the sample station locations and adjusting the reach description for the inner Las Vegas Bay. The proposed regulation would also update the ammonia standards for Lake Mead and the inner Las Vegas Bay. The current water quality sampling locations for Las Vegas Bay and Lake Mead put station 2 and 3 at a specified depth. Hence, the station moves out when the lake level falls and in when the lake level rises. However, stations LM4 and LM5 are at fixed locations. Because the lake level has dropped substantially, station 3 has moved out past station LM4 and is approaching LM5. As a result, stations LM4 and LM5 are no longer representative of the part of the lake they were intended to characterize. The relative positions of the stations are best defined by locating them a fixed distance from the confluence between Las Vegas Wash and Lake Mead. The proposed regulation will allow for this adjustment. In addition, this regulatory revision addresses ammonia criteria. In 1999, USEPA updated the ammonia freshwater aquatic life criteria. The new criteria reflect new research and changes the criteria from unionized ammonia to total ammonia. This regulation will update the ammonia standard to conform with the recommended EPA criteria. This regulatory amendment will not have a negative economic impact, either immediate or long term, on the regulated industry or the public. There will not be any additional costs to the agency for enforcement of the proposed regulation and the amendments will not overlap or duplicate any regulations of other state federal or local agencies. The amended regulation is no more stringent than what is established by federal law and it will not increase fees.

Discussion:

Sam Stegeman, Water Quality Standards Supervisor in the BWQP, briefly described this petition and the changes in Lake Mead that make this petition approval important. He added that Lake Mead has had dramatic elevation loss in the last 10 years.

Sam Stegeman introduced John Heggeness, Environmental Scientist in the BWQP, who had been working with conducting workshop presentation and updating the NAC language, and coordinated directly with the dischargers of the effected area.

John Heggeness conducted a PowerPoint presentation for the Commission. Mr. Heggeness discussed a technical correction to the petition, which is that originally they called the sites LMLVB, but they will now refer to them as LWLVB to comply with the Sampler's Naming Convention down in Las Vegas. LWLVB 1.2 is equivalent to LM2. This designation is because of the approximate distance from the confluence and this site at the time the site was set up.

The second change they requested is the reach designation for Inner Las Vegas Bay. Originally, the designation went from the western boundary of the Las Vegas Bay campground to the confluence of Las Vegas Wash with Lake Mead. The BWQP would like to change the boundary from the confluence of Las Vegas Wash with Lake Mead to 1.2 miles into Las Vegas Bay from that confluence.

Chairman Close asked where the intake tower is located and if there were any testing stations by the tower. John Heggeness said NDEP does not have testing stations there but he was certain that SNWA does.

Commissioner Henderson wondered about the redesignation of the inner bay being between the first two sample points after they are redesignated. He asked if, when the lake level drops or rises, the inner bay would move in and out between the two sample points. Mr. Heggeness said it would be at the confluence and the first sample point.

Commissioner Ricci asked how points 1.2 and 1.85 are set, if visually or by GPS coordinates. John Heggeness stated that he believed those that were set by position were set by GPS coordinates and were actually buoys at one point. He added that those set by depth were not set until they went back and found out what the depth was at the location.

Commissioner Coyner asked about the depths that were listed on the charts, wanted to know if they are charted by meters, and if the sample points for ammonia were depth dependant. John Heggeness said that originally the tests were at certain depths but with the new criteria, tests can be taken anywhere they choose. Commissioner Coyner confirmed the delta is being eroded and wanted to know if that was contributing to the pollution in the lake. John Heggeness said he was certain it was adding sediment and turbidity to it but they have not evaluated that component.

Tom Porta, Bureau Chief for the BWQP, approached the podium and added that they had consulted with the Las Vegas Wash Coordination Committee who reviews the data that the City and the County collect on the lake. An artifact on the lake's decline is that the clarity of the lake has never been greater. The lake in the Boulder Basin is much clearer than in years, possibly because there are less nutrients coming down from the Colorado system out of Lake Powell.

Chairman Close mentioned an EPA letter that states there had been two severe drought periods before this current drought. He wondered when those previous droughts were and what level the lake dropped to. Mr. Heggeness said he had seen the information but did not know the answers at that time.

NOTE: A PDF file containing maps and diagrams of John Heggeness's talk is added as appendix #5 at the end of this document.

Public Comments:

Chairman Close asked for public comments, there were none, so he called the public meeting closed.

SEC ACTION

Commissioner Rackley made a motion to adopt the resolution as presented with the change of LMLVB to LWLVB as stated by staff. Commissioner Dodgion seconded the motion; all were in favor.

(6) Petition 2004-17 – LCB File No. R103-04: Underground Injection Control (UIC): This regulation proposes changes to the permitting provisions of NAC 445A.825 through 445A.910 – Underground Injection Control (UIC). The Underground Injection Control Program is designed to protect underground sources of drinking water by ensuring injection of fluids through a well do not degrade waters of the State. The proposed amendments to these regulations are necessary due to the conflicts with the federal rule 40 CFR 144. In addition, the regulations are needed to increase fees for the first time in fourteen (14) years to provide for future staffing increases and ensure the program is fiscally stable.

Specifically, the revised regulations will generate minor increases in permit fees for underground injection control permits including creation of new permit fee categories for general and individual permits. The regulations will also clarify injection activities relating to treated effluent; change language to ensure the state regulations are as stringent as existing federal rules (40 CFR 144); and remove language related to suspension of UIC permits.

While the proposed regulation generates new fees and increases existing fees, these fee increases will have little significant economic impact, either immediate or long term, on the regulated industry and/or the small businesses sector. There will be no additional costs to the agency for enforcement of these regulations, they are not more stringent than federal regulations, nor do they overlap or duplicate any regulations of other state or government agencies.

Discussion:

Russ Land, BWPC, explained Petition 2004-17.

Chairman Close wanted to know why the BWPC was putting absolute dates for increases into this petition, as they may need less or more in the future than they are proposing. And, he wanted to know what they would do if they needed more money.

Russ Land stated that they believe the proposed increases will be pretty accurate, however if they need more, then they will have to come back and speak with the Commission.

Leo Drozdoff, Administrator for NDEP, approached the podium and spoke to the Commission. Mr. Drozdoff explained that there are several programs that have similar built in fee increases, and that because the last increase was a decade and a half ago, then the increase is a large amount and that is difficult for the public.

Chairman Close discussed the amount of one of the fees and said he would prefer to see it as \$688 as opposed to \$687.50 because it may cause a lot of problems with the public sending in a check for \$687 and neglecting the Fifty cents. Russ Land agreed with the Chairman and shared that the LCB (Legislative Counsel Bureau) made changes to his proposal for sections eight and ten, and when they did the math, they added the fifty cents.

Russ Land advised the Commission of a change that was not in their materials. It is a change to page 5, section 4, subsection 6, in which he would like to have the word “protection” added after the words “ground water” so it would read ground water protection area pursuant to subsection 5.

NOTE: A copy of Russ Land’s outline is added as appendix #4 at the end of this document.

STAFF AND PUBLIC COMMENTS:

Bill Quinn, a Hydrologist with the Southern Nevada Water Authority and a representative for the Las Vegas Valley Water District approached the podium to say they support this petition.

Christy Morris from Ormatt NV Inc., a geothermal power company, approached the podium and voiced their support for the concept of a fee increase. She added that they would like to see this increase go toward staffing for processing applications and revisions for the UIC program. She voiced a concern for several of Ormatt’s applications for renewal of permits that had been submitted a long time ago, two of which have been in for 19 months, one for 14 months, and another for 10 months. Ms. Morris said the staff is very accommodating for them but Ormatt would like to see the applications turned around in a more timely fashion and they hope the fee increases would help with this.

Commissioner Ricci asked Ms. Ricci what her feelings are on the proposed future fee increases being scheduled now. She responded that she would prefer the increase requests be brought to the Commission at the time the increase is wanted, as opposed to prescheduling them.

Commissioner Ricci asked Mr. Quinn what his feelings are regarding future increase scheduling. Mr. Quinn responded that he believed the fee increases are fair and reasonable. They do not see a significant impact from these increases.

Johnathan Brown from the Nevada Mining Association approached the podium again and expressed his support for this petition. He also thanked the BWPC and Administrator Drozdoff for their roles in resolving these issues. He also concurred with the previous gentleman, as knowing what their fee increases will be in the future will assist them with determining their budget.

When there were no more public comments, Chairman Close called the meeting to a close and asked the Commission members for their comments.

SEC COMMENTS:

Commissioner Coyner stated that both the Division of Mineral’s Geothermal Commissioner Fagan and the Oil & Gas Commissioner Kozlowski have met individually with BWPC and they are in favor of the proposed regulation. Commissioner Coyner wanted to add that with all of the fees within the Division of Mineral, none of them have future fee increase dates.

Commissioner Ricci, referring to Mr. Brown's comments of wanting some lead-time for their budgeting purposes, wanted to know if it could be possible to have a shorter time period, such as two years notice. Chairman Close said the BWPC could come to the Commission requesting fee increases two years from the request. This way the Commission would still have the right of overview and oversight without approaching something in the future, and they may want more or less of an increase than is being proposed right now.

NDEP Administrator Drozdoff approached the podium and shared his view on this fee change. He added that this is a stable and predictable program, that costs rarely go down, and have a more than likely increase in costs. Mr. Drozdoff added that he is familiar with this program and with this knowledge, the BWPC is anticipating the inherent costs/increases that they do experience year to year. They are trying to not bog down this process and provide some certainty.

Commissioner Henderson asked if this program had gone through the review committee. Deputy Attorney General Susan Gray interjected that this program has gone through the LCB but it will not go to the review committee until after the Commission has adopted it.

There were no more comments, Chairman Close asked for a motion.

SEC ACTION

Commissioner Henderson made a motion to adopt petition 2004-17 with the deletion of sections 8 and 10 in their entirety, and adding the word protection between the words ground and water on the first line of page 5 of the petition. Commissioner Dodgion seconded the motion, and all were in favor. The motion was carried.

Item taken out of order

Chairman Close announced that Item 8 would be next.

(8) Petition 2004-26 – LCB File No. R092-04: Wastewater Pretreatment Program - Publicly Owned Treatment Works: This regulation amends NAC 445A.257. The regulation address's the control of water pollution by making it optional, rather than mandatory, for the Division of Environmental Protection (Division) to administer a pretreatment program for a publicly owned treatment works that does not have a pretreatment program in place. Specifically, the regulation would strike the requirement for the Division to administer a pretreatment program for municipalities and industrial users that do not have an approved pretreatment program, and the revision would allow NDEP the option to administer a pretreatment program in cases where a municipality does not have an approved pretreatment program. At this time, the Division does not have a delegated program to operate the pretreatment program from the U.S. EPA. Therefore, the necessary resource funding from the U.S. EPA has not been awarded to the Division in order to effectively staff a pretreatment oversight program. This revision will provide the Division the flexibility to administer a pretreatment program in the future on a case-by-case basis.

This regulation will not have an immediate or long-term adverse effect on business or the public. There will be no additional cost to the agency for enforcement of the proposed regulation and the regulation does not overlap or duplicate any regulations of other state, federal, or local agencies. The

amended regulation is no more stringent than what is established by federal law and it will not increase fees.

Discussion:

Joe Maez, BWPC, very briefly explained the change requested.

STAFF AND PUBLIC COMMENT:

There were no public comments so Chairman Close closed the public meeting.

SEC COMMENTS:

Chairman Close asked for discussion from the members, there were no comments.

SEC ACTION

Chairman Close asked for a motion. Commissioner Henderson made a motion to accept petition 2004-26 as presented, Commissioner Rackley seconded the motion and all were in favor. The motion was carried.

(7) Petition 2004-23 – LCB File No. R128-04: Drinking Water State Revolving Fund (DWSRF) - Transfer of Authority. The 2003 Nevada State Legislature transferred the Drinking Water State Revolving Fund from the Health Division to the Division of Environmental Protection (NDEP). This proposed regulation addresses regulatory changes needed to reflect administration of the program by the NDEP. The proposed regulation also includes minor changes that streamline administration of the program.

This regulation will not have an immediate or long-term adverse effect on business or the public. The proposed changes may well result in some minor cost savings to business and the public through streamlining the loan application process. There will be no additional cost to the agency for enforcement of the proposed regulation and it does not overlap or duplicate any regulations of other state, federal, or local agencies. The amended regulation is no more stringent than what is established by federal law and it will not increase fees.

Discussion:

Adele Basham gave a brief overview of this program and this petition.

Chairman Close asked Ms. Basham about the ranking of contaminants in order of importance. Adele Basham stated that the contaminants are rated equally, as a health problem for one person from a contaminant is as serious to them as it is for another person who is ill from a different contaminant. Ms. Basham added that she did speak with the Health Division, as they have the background in this, and they agreed that contaminants should be considered equally ranked.

NOTE: A copy of Adele Basham's outline is added as appendix #7 at the end of this document.

STAFF AND PUBLIC COMMENTS:

Chairman Close asked for comments. There were none so he closed the public meeting and asked for a motion.

SEC ACTION

Commissioner Shull made a motion to approve petition 2004-23, Commissioner Ricci seconded the motion, and all were in favor. The motion was carried.

(9) Petition 2004-25 – LCB File No. R137-04: Chemical Accident Prevention (CAPP): This regulation proposes amendments to the section of Chapter 459 of the Nevada Administrative Code related to the Regulation of Highly Hazardous Substances and Explosives. These regulatory amendments are being proposed primarily to enact amendments made to the program's enabling statute by the 2003 Legislature (i.e., NRS 459.380 to 459.3874, as amended by Senate Bill 127). Substantive changes include identifying in the regulation, as opposed to in the statute, the list of highly hazardous substances; this will allow flexibility for adopting newly recognized hazards and developing specific lists of regulated explosives. The proposed regulation will specify the procedure for issuing cease and desist orders in cases where danger to employees or the public is imminent. The proposed regulation will also allow NDEP to conduct investigations of accidents. Additionally, program structure will be significantly revised to enable more thorough and efficient implementation of accident prevention program requirements.

The proposed CAPP regulation will have an overall positive economic effect on regulated businesses. There is no anticipated economic impact on the public. Businesses will see an increase in program fees; however, this increase will enable continued oversight by NDEP thereby providing continued incentive for program compliance. Having compliant accident prevention programs will reduce risks of catastrophic accidents, and help better structure business operation. In essence, the immediate effect of increased fees will increase operating cost, however, the long-term effects will manifest in improved employee and public safety by way of lower accident rates. Better safety performance will lower overall operating costs to the regulated community.

The CAPP regulation is somewhat similar to the federal OSHA regulations administered by the State Division of Industrial Relations and federal EPA. However, the CAPP regulations and permitting requirements are unique to the State and are the only regulations that mandate in-plant inspections and provide a funding mechanism for such inspections.

As noted, the regulation will increase fees to support program oversight activities. Fee increases are necessary to offset salary adjustment to the engineering series as enacted by the Nevada legislature; fee increases will also cover some program supervisory oversight. Fees will be collected from 45 facilities annually, starting in July 2005. The estimated cost to the agency for enforcement of the proposed regulation will be covered by the revised fee structure.

Discussion:

Mark Zusy, Supervisor of NDEP's CAPP Program, gave a brief overview of the program.

One thing Mr. Zusy noted that was not in the presentation was that they have put in a fee cap for their larger facilities. The fee cap is \$35,000.00 and once a facility has reached that amount, they will not pay any more than that.

Commissioner Ricci asked about training for responders at these sites. Mr. Zusy explained that responders will go look at the sites, learn about the chemicals, and how to dress if they had to respond.

Commissioner Anderson was concerned about training for the many volunteers who would need direct training, and that equipment may be limited. Mark Zusy replied that they have dealt with responders, one example would be the City of Carlin, and they have responders from mines and other cities who have training. He added that volunteer firefighter would not be able to provide HazMat responses.

Commissioner Crawford asked if Homeland Security would get involved with the CAPP Program. Mark Zusy replied they would not.

NOTE: A copy of Mark Zusy's powerpoint presentation is added as appendix #9 at the end of this document.

STAFF AND PUBLIC COMMENTS:

Chairman Close opened the meeting for public comments.

Christy Morris from Ormat Nevada, Inc. approached the podium. Ms. Morris asked the Commission to consider the following suggestions:

- 1) NDEP should retain the two-tiered CAPP program or revise the program in such a way that remote facilities which cannot impact the public or sensitive environments with accidental releases are not subject to the level of regulation required for urban center facilities.
- 2) The table of threshold quantities in NAC 459.9533 should adhere to the federal CAA Section 112(r) thresholds so as not to unnecessarily broaden the regulated community under CAPP with small quantity chemical users.
- 3) Small quantity and remote facilities which could not impact the public or sensitive environments with accidental releases should not be subject to the same fees as urban area facilities.

The last paragraph of Ms. Morris's outline read:

It is understood that much of the proposed changes are geared toward greater control of processes which use explosives. We understand and support the need for this regulation which was the focus of Senate Bill 127. One possible way of handling this area of hazardous materials would be to separate its regulation, much as is done with radioactive materials and equipment, within the NAC 459 chapter, allowing for greater regulation, fee adjustments and lower thresholds where justified without the comprehensive program changes as proposed.

NOTE: A copy of her outline is added as appendix #10 at the end of this document.

Lorne Clark from DynoNoble spoke and gave their support for the CAPP Program. He said the CAPP Program staff have expertise and are very diligent.

There were no more public comments; Chairman Close called the Public Meeting to a close.

STAFF AND PUBLIC COMMENTS:

Mark Zusy added that CAPP has a Legislative declaration to protect employees, citizens, and the environment. CAPP does duplicate OSHA inspections. Mr. Zusy stated that Ormat has Butane and Pentane in their remote geo thermal facilities so they must have an emergency response plan.

SEC COMMENTS:

Commissioner Crawford, based on his knowledge of the CAPP Program and its staff, made a motion to accept petition 2004-25. Commissioner Ricci seconded the motion. Chairman Close and Commissioner Coyner both opposed the petition. After further discussion, the Commission approved the petition with the following changes:

The Commission did not concur with the fee increases that were scheduled to become effective on July 1, 2007 and July 1, 2009. In order to appropriately reflect the adopted regulatory language, the Commission approved the regulation with the following amendment; the sections related to fee increases in the years referenced above are to be deleted from the petition as drafted by LCB.

Chairman Close called the meeting to a close at approximately 3:00 p.m..

APPENDIX

- 1) **Petition 2004-27 - Vehicle Emission Testing - Inspection & Maintenance Program, Page 15**
- 2) **Petition 2004-29 - Adoption By Reference of Federal Regulations, Page**
- 3) **Petition 2004-28 - Visible Emissions – Technical Correction, Page**
- 4) **Information Item -- State Implementation Plan (ASIP), Page**
- 5) **Petition 2004-24 – LCB File No. R136-04: Water Quality Standards, Change in Sampling Locations – Lake Mead & Las Vegas Bay**
- 6) **Petition 2004-17 – LCB File No. R103-04: Underground Injection Control (UIC)**
- 7) **Petition 2004-23 – LCB File No. R128-04: Drinking Water State Revolving Fund (DWSRF) - Transfer of Authority**
- 8) **no document**
- 9) **Petition 2004-25 – LCB File No. R137-04: Chemical Accident Prevention (CAPP)**
- 10) **Ormat's Comments regarding Petition 2004-25**

APPENDIX 1- PETITION 2004-27 Vehicle Emission Testing – I/M Program 11/30/04

Two fundamental changes:

- 1) To keep the regulations consistent with the amended statutes – AB 36
- 2) To clarify the geographic extent of the I/M program and bring that regulatory definition closer to what is in the SIP – requested by DMV

How Is I/M Area Defined Now

- Regulations state that Clark County residents must provide evidence of compliance for used vehicles being registered or reregistered;
- Exception for those based at seven named towns (Indian Springs, Moapa, Logandale, Bunkerville, Jean, Good Springs, and Mesquite)
- DMV maintains a list of zip codes that are exempted
- Point out exempted towns and zip code areas

What Problems Does This Present DMV

- Most zip codes are well defined rectangles or polygons
- However, some zip codes cover a wide and dispersed area
- The 89124 zip code covers an area on the southern fringe of Las Vegas, however, it also is used as a catch-all for rural areas that are not tied to any other post office
- Point out rural 89124 areas (Mtn. Springs, foot of Mt. Charleston, Calville Bay, Calico Basin)
- Vehicle owners from these rural 89124 areas were requesting exemptions from DMV Emissions Technicians and in many cases being granted them – probably outside of specific regulatory authority
- DMV recognized this problem and asked NDEP to help find a way to better-define the I/M area

What NDEP Did

- NDEP went to the I/M SIP to see how the area is defined there
- The SIP requires that the areas for the I/M program are:
 - The Boundaries of Hydrographic Basin 212
 - The city limits of Boulder City
 - And a list of zip codes in the Las Vegas/Henderson/Boulder City areas
- So NDEP wanted to more closely tie the regulatory definition of the program area to Hydrographic Basin 212 and Boulder City
- Proposed language includes HB 212 and a 5 mile buffer
- The buffer allows there to be no dispute about several communities that lie along the HB 212 border (Mountain Springs and Mt Charleston)
- Buffer also includes Boulder City and the growing community of Lake Las Vegas
- You'll notice in the language change that the seven listed cities are being stricken from the regulation because they all lie outside of the 5 mile buffer – with the exception of Goodsprings – and so Goodsprings was left in the regulation.

What Does This Change

- Let me stress that this does not represent a significant change in the extent of the I/M program. The communities well outside the Las Vegas Valley that have been outside the program (seven areas) will continue to be exempt from smog testing.

- We expect that some vehicle owners inside the boundary who may have received an exemption in the past will now have to perform the smog check (show areas). Others outside the boundary will be granted an exemption (show areas)
- DMV will use this map, along with a list of zip code areas that is based on the boundary depicted, to help make determinations of which registered vehicles are in the program.

Washoe County

- 89510 is the problem zip code
- The SIP requires the I/M program to be related to HB 87 and also lists zip codes
- Area is bounded by CA, Incline Village, CC, Storey, Lyon
- Wanted to find a geographic feature that would provide a northern boundary
- 40th parallel runs through Pyramid Lake and forms a convenient northern boundary
- Gerlach & Sutcliff

In summation, we would recommend that you approve these regulation changes and thereby provide the DMV with the means to implement the I/M program in a more straightforward and fair manner.

APPENDIX 2- PETITION 2004-29 Adoption By Reference of Federal Regulations

Good morning Mr. Chairman, members of the commission, my name is Greg Remer. I'm a Staff Engineer with the Bureau of Air Quality Planning. I'm here this morning to present a summary of proposed changes to the air quality regulations contained in Petition 2004-29 (Item IV(2) on the Commission's agenda).

The agency held a workshop in Carson City on November 3rd, to solicit comments and input on the proposed revisions. Approximately, 10 people attended the workshop. No adverse comments were received at the workshop. In general, these amendments are favorable to Nevada's industry.

Section 1

Section 1 of the Petition provides for revisions to Section 221 of Chapter 445B of the NAC. This section identifies Federal Regulations that the Commission has adopted by reference. Specifically, we are proposing to update subsections of the regulation that relate to the Federal New Source Performance Standards (NSPS) and the National Emission Standards for Hazardous Air Pollutants (NESHAPs). The current referenced date in the NAC for the NSPS and NESHAPs adoptions is July 1, 2003. Between July 1, 2003 to present, several new sections were added to the CFR, while others were amended. We are therefore proposing to update the adoption date to July 1, 2004. For example, 40 CFR Part 60, Subpart GG was amended, in part, to allow affected sources more flexibility in the monitoring requirements. The current version of the CFR adopted into the NAC does not contain this allowance. As such, Nevada's sources are required to deal directly with EPA until the federal regulations have been adopted by the Commission and our delegation authority updated by EPA. We will be submitting our delegation request immediately following adoption and filing. It should also be noted that changing the CFR reference date also requires that the cost of the CFR's (identified in subsection 10) be updated as well.

We recommend that the Commission approve the changes as proposed in Petition #2004-29. Thank you.

APPENDIX 3- PETITION 2004-28 Vehicle Emission – Technical Correction

Good morning Mr. Chairman, members of the Commission, my name is Greg Remer. I'm a Staff Engineer with the Bureau of Air Quality Planning. I'm here this morning to present a summary of proposed changes to the air quality regulations contained in Petition 2004-28 (Item IV(3) on the Commission's agenda). Before doing so, I wanted to provide the Commission with a little background for the basis of the changes being proposed in this Petition. As you may know, the NDEP has been working with USEPA Region IX and representatives of Nevada's various industry to bring Nevada's Applicable State Implementation Plan (or SIP) consistent with the current Nevada Administrative Code. This effort has been ongoing now for several years, and has resulted in a number of previous changes to the NAC. I'm here today to present information related to our final efforts and to move forward with submitting a SIP package to EPA for their review and approval. NDEP anticipates submitting the SIP to EPA by the end of this year.

The agency held a workshop in Carson City on October 20th, to solicit comments and input on the proposed revisions. Approximately, 10 people attended the workshop. No adverse comments were received at the workshop.

Sections 1 through 4

Sections 1 through 4 of the Petition provide for revisions to Section 22017, 2202, and 22023 of Chapter 445B of the NAC. These sections all relate to opacity requirements for sources. The proposed amendments are technical changes and are not substantive in nature. Specifically, these changes are being proposed to remove references to other sections in 445B.22017. This is being done to allow EPA to approve the rule as part of Nevada forthcoming SIP submittal.

We recommend that the Commission approve the changes as proposed in Petition #2004-28. Thank you.

Appendix #4: PROPOSED UPDATE TO NEVADA'S ASIP, 11-30-04
TALKING NOTES

HELLO: Mr. Chairman, Commissioners
NAME: Adele Malone, Planner, BAQP
WHAT: Explain info item in your packet, i.e., proposed update to Nevada Applicable State Implementation Plan

In Your Package under Item #4

- 1) Brief overview of what the ASIP is, why the update is necessary
- 2) Near final draft of the proposed new ASIP, a subset of the AQ NACs. These regulations pertain to the rural parts of the state (in attainment for the NAAQS), i.e., the part of the state that is under NDEP's jurisdiction. Clark and Washoe Counties have their own nonattainment SIPs. (Criteria pollutants: O₃, CO, PM, SO_x, NO_x, lead) In Clark & Washoe Counties, the ASIP only applies to plants that generate electricity by using steam produced by the burning of fossil fuels (Clark & Sunrise, Reid Gardner and Mohave).
- 3) Current outdated ASIP: (a) The provisions that have no shading are carried over into the new ASIP in some fashion. Most of them have a corresponding current NAC with either the same language or revised language, which will replace the old provision in the new ASIP. A few will be retained as is – i.e., with the old language and numbering. (b) The provisions in light gray are being deleted entirely. (c) Then there are a few in dark gray that we are still in the process of deciding whether to submit or not, based on environmental analyses of specific sources.

To Give You Some Background

The ASIP was originally submitted to EPA in 1972 in response to a CAA requirement that each state develop a plan showing how the state will attain and maintain NAAQS. There were updates and additions in 1975, 1978, and up until 1984. Since then there has not been an official update of the regs in ASIP.

Basically, the current ASIP is 20 years old or more. If you look at the “old” – current - ASIP document and compare it to the proposed new ASIP in your book -- big disparity between them, both in content and in the numbering systems. And so, it is quite important that we update the regulations in the ASIP and align them with the current state regulations.

This is especially important because the ASIP is a federally enforceable document. When EPA reviews & approves a State's plan → federally enforceable. This means that EPA has the authority to enforce the regulations in the ASIP. If they believe that sources/facilities are not complying w/state regulations, they could step in. So, this update will align what is federally enforceable with what is in our current air pollution control program.

Bureaus have been working 10 years on trying to update the ASIP. But it is a very convoluted and complicated process. Every time we make a major programmatic change, progress on the ASIP stops. This is because we have to take time out to develop new regulations and take them through the amendment process. And, those programmatic changes affect the ASIP. Some of these program changes include the Title 5 amendments (mid 90s); the change from an operating permit program to a construction and operating permits (took place over 2001 and 2002); and the New Source Review provisions, federal revisions that had to be woven into the state regs (2003-2004).

Now, finally, our program is stable enough that we've been able to put this package together and move it forward. For the past 2 years, we've been working very closely with EPA and industry to develop this update. We've been addressing comments that EPA has provided on earlier draft ASIP submittals; we've had numerous meetings and other communications with industry and EPA. There were a half dozen or so issues that were very difficult to come to resolution on between EPA and industry, which has taken time (stds table, public notice for minor sources, excess emissions, etc.). We have a package here that industry supports and EPA is in a position to respond quickly.

The Types of Changes We've Made in the Proposed ASIP Include

- Removing provisions that are no longer appropriate (EPA has specific guidance on this topic)
 - Definitions no longer used
 - Provisions that would interfere w/EPA's federal authorities if we submitted them:
 - (a) State procedural/administrative regs - example: p. 30 of the old ASIP, NAC 445.662, confidential information provisions, (how confidential info may be used by the state); p. 39, NAC 445.696 procedures for issuing a notice of violation.
 - (b) State enforcement - - example: p. 39-40, NAC 445.697, stop order provision describes enforcement authority of state.
 - (c) State programs that don't deal with criteria pollutants, like odor regulations, p.55, NAC 445.844
 - Provisions that no longer apply – regs written for specific sources back in the 1970s-early 80s and the sources are now gone – for example, like Kennecott's copper smelter in McGill that has been closed since 1983, p. 44, NAC 445.723; p. 47, Article 8.1
 - If possible, sources still operating, trying to remove from ASIP so we can deal w/it through permits – p. 44, NAC 445.730-colemanite, p. 51, Art 16, cement kilns
- Adding NACs that are not in the old ASIP or updating old ASIP provisions to ensure that our State program and federally enforceable plan match
 - For example, New Source Review amendments that incorporate new flexibility provisions from the federal rule into state reg (p. 53 of proposed ASIP)
 - Standards table which includes PM10 instead of total suspended particulates (p. 30 of proposed ASIP)
- What we can't change: There are a few old provisions that for various reasons, we are asking EPA to retain as they are. These include the excess emissions provision (Article 2.5.4 on p. 32), plus several regulations that deal with specific sources, like the PM emission limits (NAC 445.816, p. 54) set for Freeport Gold's precious metal processing plant, which is now Queenstake's Jerritt Canyon mine north of Carlin and Elko.

In the future, depending on the action EPA takes, we may have to come back to the SEC to adopt these ASIP provisions into the NACs.

In Conclusion

We are submitting a subset of the current Nevada Administrative Code to basically replace the current ASIP:

- Have been bringing reg changes to the SEC over past several years in preparation for this submittal.
- Each amendment has gone through the formal approval process w/each SEC hearing.
- Public Workshop on October 20 for the proposed ASIP, which was attended by representatives of mining (large and small), utilities, construction industry and general contractors.
- We don't need any formal action from the commission today. Did want to give you this update on the status of the ASIP and provide the opportunity for public comments once more.

Will keep you informed at future hearings on how the ASIP is progressing and how EPA review process is going. I will be glad to answer questions.

Nevada Bureau of Water Quality Planning

Water Quality Standards

Lake Mead

2004

<http://ndep.nv.gov/>

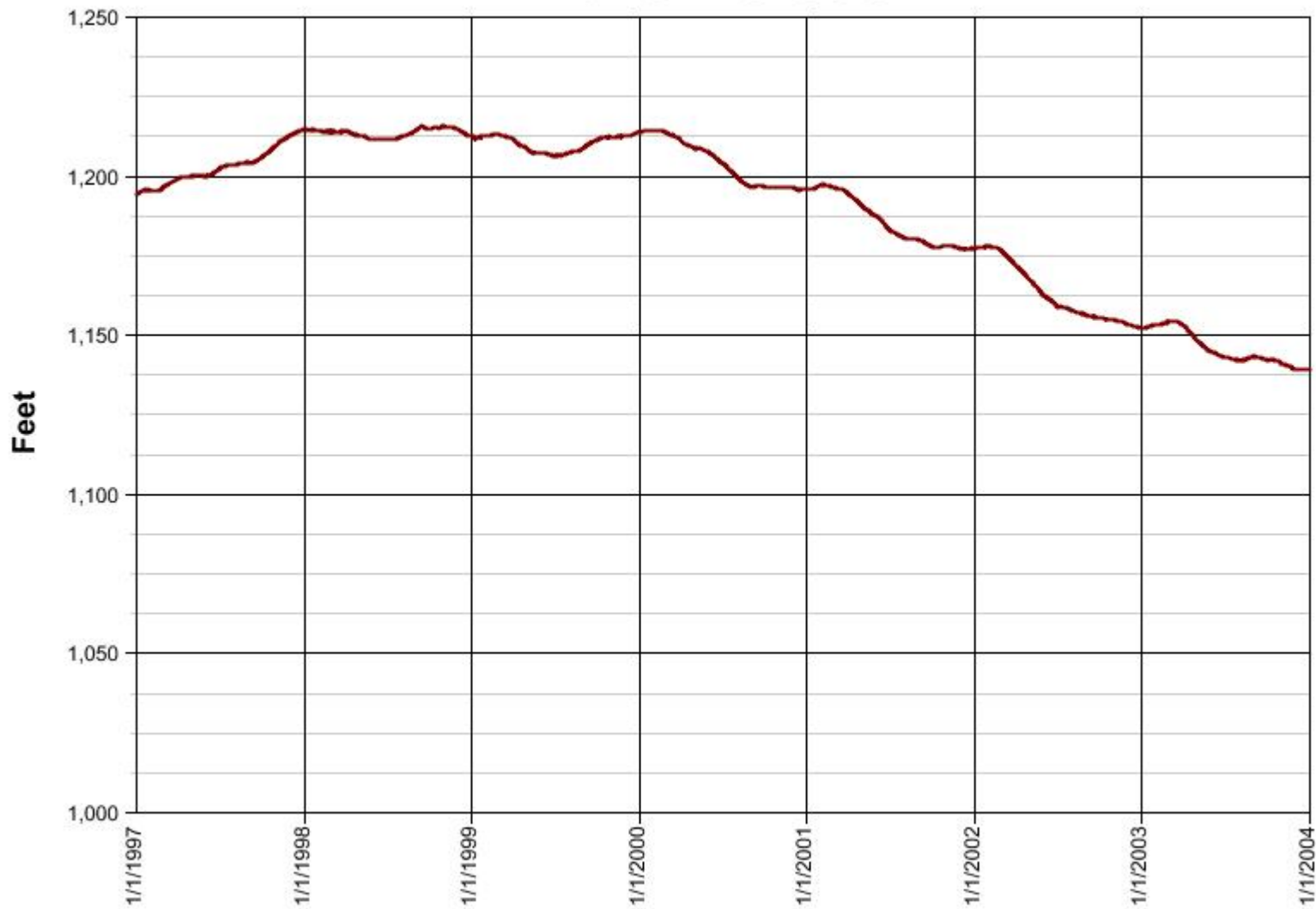
Water Quality Standards

- Nevada Water Quality Standards
 - NAC 445A.118 – 445A.225
 - <http://ndep.nv.gov/nac/445a-118.pdf>
- Lake Mead - NAC 445A.194 – 445A.197
 - Standards Revisions
 - Monitoring Locations (NAC445A.195 & 197)
 - Reach Descriptions (NAC445A.196 & 197)
 - Ammonia (NAC445A.195 & 197)

Monitoring Locations

- Monitoring Locations (NAC445A.195 & 197)
 - Standards for Chlorophyll a at LM3 – LM5 and ammonia for the inner bay at LM2
 - Site LM2 and LM3 located by Depth (LM2 – 10m, LM3 – 16 to 18 m)
 - Site LM4 and LM5 located by fixed position
- Due to Lake level drop sample sites are intermingled and no longer representative

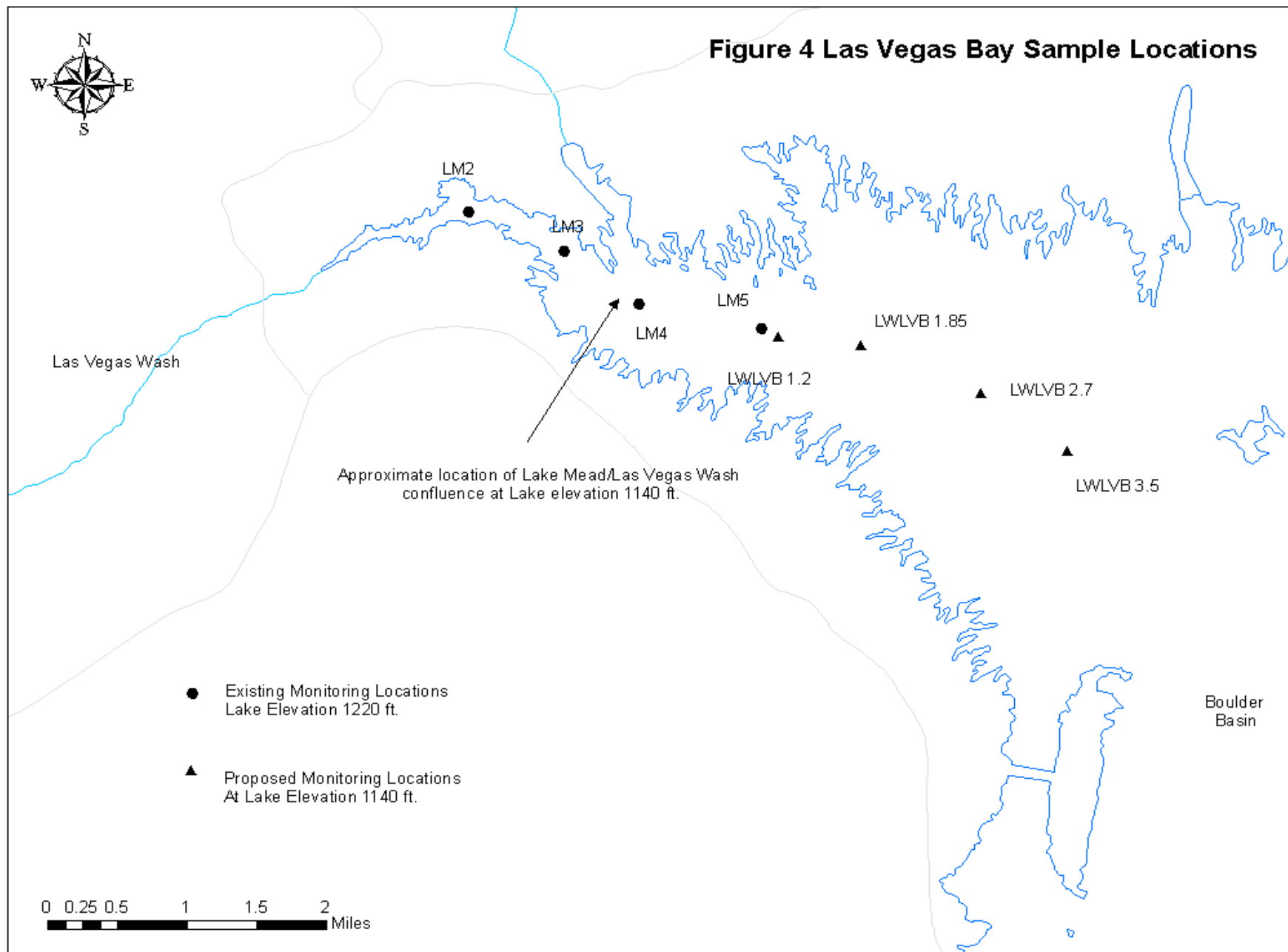
Lake Elevation



Monitoring Locations

- Proposing to locate Sites referenced to distance from confluence of Lake Mead and Las Vegas Wash (1.2, 1.85, 2.7 and 3.5 miles from the confluence)
 - Sites will move as lake level changes
 - Sites will keep separation as lake level changes
 - Sample Designations
 - **LWLVB 1.2 (LMLVB 1.2)**

Figure 4 Las Vegas Bay Sample Locations



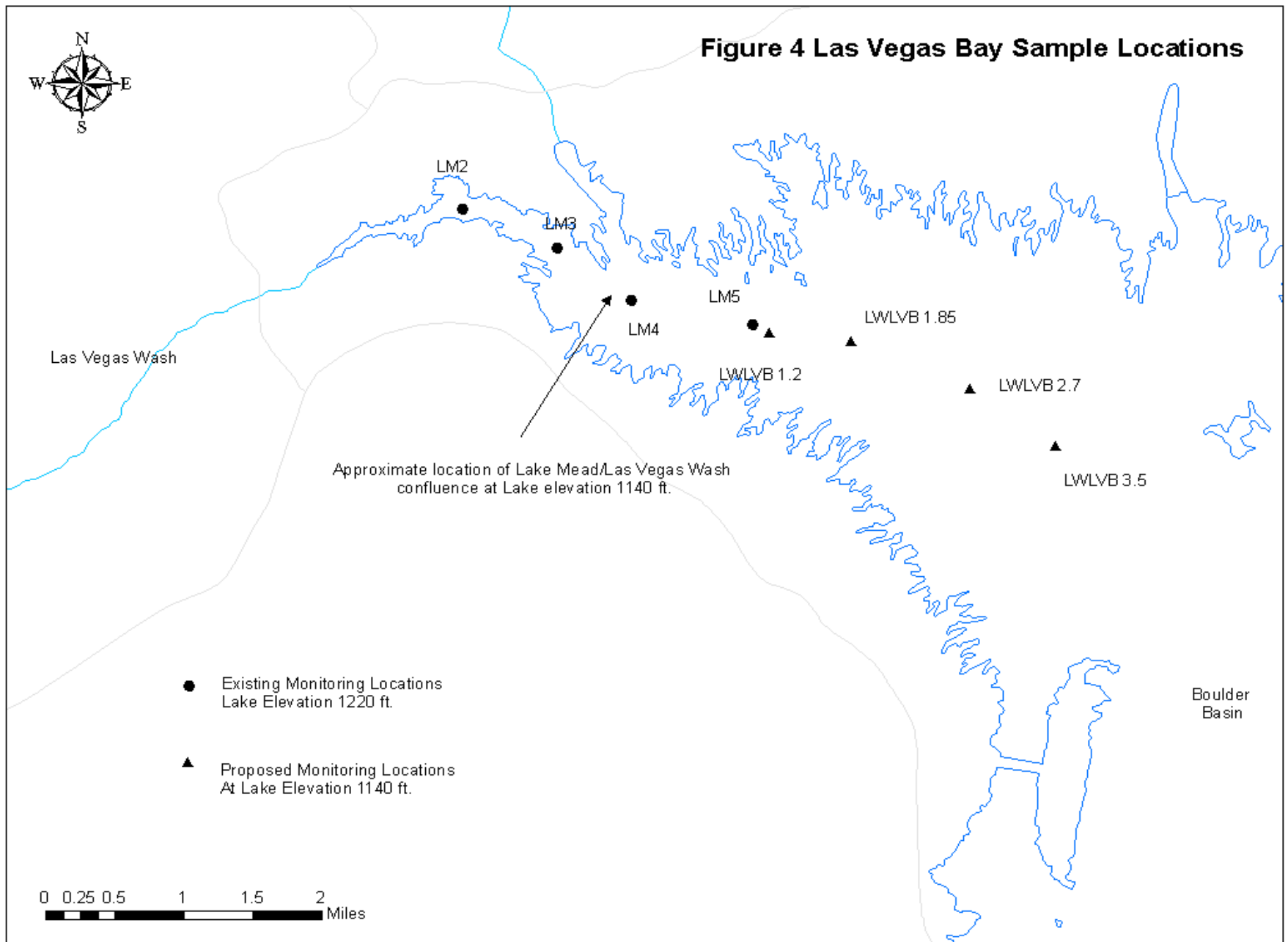
Site	Elevation	Volume at 1220 (acre feet)	Volume at 1140 (acre feet)	Volume Change from 1220 (acre feet)	Volume at 1100 (acre feet)	Volume Change from 1220 (acre feet)
LWLVB 1.2	1220	1,923	5,004	+ 3,081	1,314	- 609
LWLVB 1.85	1220	5,700	10,451	+ 4,751	4,184	- 1,516
LWLVB 2.7	1220	21,318	21,695	+ 377	9,897	- 11,421
LWLVB 3.5	1220	68,441	46,074	- 22,367	25,241	- 43,200

Site	Elevation	Depth (in m) at 1220 ft	Depth (in m) at 1140 ft	Depth Change (in m) from 1220 ft	Depth (m) at 1100 ft	Depth Change (in m) from 1220 ft
LWLVB 1.2	1220	14	30	+ 16	18	+ 4
LWLVB 1.85	1220	18	39	+ 21	27	+ 9
LWLVB 2.7	1220	39	58	+ 19	46	+ 7
LWLVB 3.5	1220	50	72	+ 22	60	+ 10

Reach Designation

- Inner Las Vegas Bay(445A.196 & 197)
 - Lake Mead from **western boundary of Las Vegas Bay Campground** to the confluence of Las Vegas Wash with Lake Mead
 - Lake Mead from the confluence of Las Vegas Wash **with Lake Mead to 1.2 miles into Las Vegas Bay from the confluence.**

Figure 4 Las Vegas Bay Sample Locations



Ammonia

- Currently un-ionized ammonia
 - 4 day average 0.05 mg/l no more than once every 3 years
 - Single Value 0.45 mg/l no more than once every 3 years
- 1999 EPA ammonia criteria
 - Total ammonia
 - not single values, site-specific values determined via algebraic relationships
- Reference to NAC445A.118

Meetings With Stakeholders

- Workshops
 - Las Vegas – August 25, 2004
 - Carson City – August 31, 2004
- Lake Mead Water Quality Forum
 - October 25, 2004
- Three Comment Letters – All Favorable
 - See Exhibit 1
 - City of Las Vegas
 - U.S. EPA
 - Southern Nevada Water Authority

Water Quality Standards

- I Would Be Happy to Answer Any Questions.

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APPENDIX 6) Petition 2004-17 – LCB File No. R103-04: Underground Injection Control (UIC)

Good Afternoon Mr. Chairman, members of the Commission. My name is Russ Land. I am the Supervisor for the Groundwater Protection Branch within the Bureau of Water Pollution Control, at NDEP.

I am here today to present the proposed changes to the Underground Injection Control - or “UIC” regulations under Petition 2004-17. As you may remember, this petition was before you at the August 19th meeting, however, we discovered certain individuals were not aware of the workshops held in April and the proposed changes. We felt that it was important to withdraw our petition in August and discuss the changes with these individuals. I have contacted those individuals, and held a meeting with them to explain the changes to their satisfaction.

I’d like to spend a few minutes giving you an overview of the UIC program. Nevada has had primacy for this federal program since 1988. As with all federal programs, to maintain primacy, the Nevada regulations must be as stringent as the federal mandates.

The UIC program regulates all activities associated with the injection of a fluid into a well with the intent on protecting underground sources of drinking water. There are 5 classes of injection wells, with more than 20 different sub-types. Just a few of those types are: Class 2 oilfield disposal wells, and Class 5 wells including aquifer remediation wells, aquifer recharge wells, geothermal injection wells, and since 2001- even include large-capacity septic systems, and floor drains at auto shops or other commercial facilities connected to shallow drain fields.

The core UIC Program is funded by two sources – one being a federal grant, and the remainder of our income is permit fees. Our program has changed drastically over the last 16 years. Historically, UIC permits have been individual permits; meaning one permit was issued for one project. Back in 1992, we had 40 individual permits, in 1996 – roughly 80 permits with 2 FTEs. The program currently maintains over 120 individual permits, and in 2002, we took responsibility for another 150 projects covered by 2 general permits, still with only 2 FTEs.

There are two main reasons that bring me here today.

1. The first reason is to propose changes to the UIC fees and fee categories to help maintain the state’s expanding UIC Program. These changes are under Sec 7, 8, and 10; and
2. The second is to make changes to the UIC regulations to ensure they are as stringent as the federal rule. These changes are under Sec 1, 4, 5 and 6.

There are other minor changes for clarification purposes under Sections 2 and 3, and one change for the removal of language, that being Section 9.

We held 3 public workshops regarding the proposed regulation modifications, in Carson City, Las Vegas and Elko. (workshops attendance - 12 people.) Notices were published in the Las Vegas, Reno, Carson City and Elko newspapers. The overall response was support of our proposed changes. We received two minor written comments, and a few questions during the workshops. All questions were responded to either in writing or at the workshops.

If approved by the commission today, these changes will become permanent regulations – as we submitted the draft regulations to LCB in May, and were returned to us in June. The LCB changes were

very minor, however there are 2 changes I need to request today that I will discuss in a minute.

Fee Increase

What I would like to do now is spend a few minutes discussing the proposed fee changes. UIC related fees have not been increased in over 14 years (Sept 19 1990). And, our federal grant has remained constant over this time as well. The number of permits have increased over this time to increase our revenue to keep up with our budget – Now we are at a point where our staffing needs do not meet our regulatory responsibilities, and our current revenue does not allow for increased staff.

The main reason we are asking for a fee increase is to fund one new position. As I mentioned earlier, our permitting workload has more than tripled over the last 14 years and to meet that demand, we have requested a new position for July 2005 in our next budget.

We have tried to increase fees in an even and consist manner across the board for all permits. When developing our current and future fee increases, I took into consideration 1) the cost of this new position and 2) the future funding needs of our program. Most of the individual permits were increased by approximately 25%, which amounts to an annual average of 1.7% over the last 14 years. And the addition of new general permit categories were created to allow for structure changes in our permitting program to make us more efficient.

I also looked for inequities under fee categories where the amount of time in permitting justified a higher fee. We are proposing one new individual permit fee category for this reason. This category is for aquifer storage, recharge and treated effluent injection wells.

Not only are we requesting increases in existing categories, we are also proposing changes that will create new fee categories for general permits. General permits require less paperwork to manage certain types of injection activities. This will help reduce the cost of permitting for some permittees by moving them from individual permits to general permits, and reduce the permitting workload for our staff to make them more efficient with their time. Starting on page 9, we are proposing 5 new general permit categories – and - a NEW plan review-filing fee for general permits only. I have factored in the reduced income from this strategy to ensure we still have enough for a new position.

We are also proposing a fee increase of 10% in 5 years after this initial increase, on July 1, 2010 in accordance with Section 8 and 10. I want to keep the current fee increase to a minimum at around 25%, and then request another increase in 5 years to keep up with operating costs.

At this time, I will need to ask for a change to Section 8 – subsection 5. We originally were planning on an standard increase once every 5 years, but when we got LCBs changes back, we noticed they had only included application fees – and did not include annual fees. After reconsideration, we decided it would be better to limit our future increase to 2010, then reevaluate any income increase after that.

Next – I will go over changes necessary to meet the federal mandates. However, I'd like to stop here and see if you had any questions regarding the fee increases and changes?

Federal Requirements

I'd like to briefly go over changes related to the federal requirements. This will cover changes in Sections 1, 4, 5, and 6.

The most significant change regarding meeting the requirements of the federal rule is the removal of language under Section 1. If you'll turn to Section 1, page 1, I'll go over this change briefly. (WAIT) In response to federal rule changes back in 1999, the Nevada program modified our regulations in 2001. Under the federal rule, the definition of a well is similar to what you see under Section 1. Where our definition includes an exemption for small capacity septic systems, US EPA excludes small septic systems in a section separate, and that is their only exclusion. We wanted to include the "exclusion" for small septic systems here to keep it simple. In Nevada, the Health Division regulates small septic systems.

Under Section 1, subsection 4 – we also wanted to exclude shallow drain fields for certain mining activities. We had a situation where our Mining Bureau already regulated shallow disposal fields at mine sites, and NDEP and the mining industry wanted to exclude these systems under the definition of a well to ensure there was not a duplication of effort. The US EPA understands other state or local agencies commonly oversee certain types of disposal systems, however, EPA challenged this language, because there is not language under the mining regulations to ensure the State is as stringent as the federal rule.

So, what we are proposing now is to remove the language from Section 1-subsection 4, and in turn, we have added language under the UIC Primacy Package – including a Program Description and the AGs Statement, which is submitted and approved by the US EPA, to clarify that certain types of wells will be handled by other state agencies.

The other change that I need to request today is a minor change on the first line of page 5 - Section 4 - subsection 6. (WAIT)

The word "protection" should be added after "ground water". It should say "ground water protection area pursuant to subsection 5".

I've gone over the highlights of our proposed changes are, I'd like to welcome any additional questions you may have now.

Thank You.

Budget – Our current grant and fee income just covers expenditures for the UIC program and bureau overhead costs.

Future Fee Increases – 10% in 2010

- From 1990 to 2000, as small program, no problems financially
- Last few years, have been seeing
- General permits don't bring in large sums
- By adding a new staff member, our budget is going up
- Which means it is more critical to increase fees to ensure we don't go into the red

We have been carrying the permitting functions for some part of the new UIC permitting responsibilities by using other staff members in other programs, putting a strain on those programs. I want to get away from that.

Changes Made after Workshops

There were two changes to the original draft regulations based on workshop and written comments:

1. The first change was for the future fee increases; I had originally proposed a 5% increase every 2 years. I changed that to 10% every 5 years (annual average from 2.5% per year to 2%). The reason I did this was:

- a. Original language was confusing, and
 - b. I felt a modest increase now followed by another 5% 2 years from now was too soon
 - c. And the 10% every 5 years will still keep our program fiscally stable
2. Modified the fee amounts and the type of injection wells for the new individual permit category for recharge-type wells
- a. Fee changed from \$3,000/\$50 per well to \$2,000/\$60 for applications, and \$1,250/\$25 to \$600/\$40 for annual and renewal fee.
 - b. Included ‘aquifer recharge’ and ‘treated effluent projects’ to this group because they would require the same type of technical review (currently, only 1 AR project, party that made the comment)

Program Efficiency

Nevada law requires a permit for all injection wells, including Class V wells, and requires renewal every 5 years. For Class V injection wells, the federal rule and other states only require registration or inventorying of these wells, and if permitted, renewal every 10 years. I’d like to emphasize this point; most states follow the federal rule, and only require registration of Class V wells, while Nevada requires by law permits for all Classes of injection wells.

This means we must issue a permit for every injection well, and go through a lengthy permitting process. And with the changes in 2001 to include subsurface disposal fields, the number of facilities with injection wells has at least tripled. If we can issue general permits, instead of individual permits, we will be able to follow the law while keeping the workload and cost down.

The general permit category for remediation projects lasting more than 6 months is a key to enhanced efficiency in our program. Currently, 60% of our individual permits are remediation - these are groundwater clean-up sites where they use injection wells to treat groundwater in place, or dispose of the groundwater after treatment. A lot of the permit processing time and workload is with the permit drafting and public notice/comment process. We rarely receive public comments for these permits, so if we issue general permit to cover this activity, then we only have to issue a public notice for the general permit. We can then cover applicants under this general permit more quickly at a lower cost. For complex or locally sensitive projects, we can still require an individual permit with its own public notice process.

Section 1 – page 1

Remove language – “or with mining processes”

New language included in 2001.

Intent was to exclude these distribution systems since they are regulated by BMRR

Language being added to Program Description and AG’s Statement

Over the last few years, EPA has argued that State regulation is not as stringent

Does not include other types of mining injection wells

Section 2 – page 1

Treated effluent clarification

We’re lifting the ban on the injection of treated effluent. (Section 30) The reason for doing this is so that our regulations do not contradict themselves. EPA expanded the definition of a well to include leachfields. These are typically associated with a septic system, which facilities like our Prisons use regularly. If we leave the prohibition in our regulations, then septic systems which flow through a leachfield would be prohibited.

Section 3 – page 2

Clarification that Class V wells may include other types not listed

Section 4 – page 4

Change Other Sensitive GWA to a GW Protection Area.

Under subsection 6 of this section, I request that the word “protection” be added on the 3rd line after ground water.

Section 5 – page 5

NAC 445A.8493 – “apply for” to “obtain” permit

Section 6 – page 6

NAC 445A.8499 – for not more than 1 year

Section 7 – page 6

Current fee increase section

Main criteria was the amount it will take to hire one full-time FTE (the other was an increase could be related to the COLA average over the last 14 years.)

Section 8 – page 11

July 1, 2010 fee increase language

Section 9 – page 17

NAC 445A.885 Removal of permit suspension language

With many Remed permits going to general permits – suspensions won’t make as much as a difference

Section 10 – page 18

LCB section clarifying Section 9 become effective on July 1, 2010

Workshop and Written Comments

1. Fees changes applicable in 2004? Probably not. Based on when they are codified.
2. Rationale for 5% fee increase every 2 years? Originally, this was proposed for future increases, however, due to the current increases, we felt it would be more appropriate to wait 5 years for another increase, and
3. Why ASR wells fall into Class V? This is where the federal rule places them. No other class to place them in at this time. Will ASR ever be broken out? No, unless other classes are implemented by the US EPA.
4. Future fee increases, and language regarding compounding amount by 5% every 2 years is confusing.
5. Written comment – Charging fees based on whether new or modified application versus renewal with no modifications. Charging per well. Do you have an idea of how many man-hours it takes to review applications?
6. Written comment – Clarification that NAC 445A.849 Class V wells will “allow” injection of treated effluent or a mixture of treated effluent and potable water for aquifer storage and recovery. By including the new language, “without limitation” means that certainly treated effluent injection wells could be a Class V well even though it is not specifically included.

New Fee – Aquifer Storage and Recovery injection wells

New Fee - Six-month Remediation General Permit

New Fee – General Permit – Others without report requirements

New Fee - Technical plan review fee for General Permits

Fee Shift - Long-term Remediation General permit fees – transfer from individual to general permit – small reduction in fees with large increase in program efficiency

Fee Increase - General Permit – Others with report requirements

Fee Increase – Large capacity Septics

NOTES

Budget numbers

\$220,000 for program

\$85,000 grant

\$235,000 fee income

\$320,000 total income

APPENDIX PETITION 2004-23 – LCB FILE NO. R128-04: DRINKING WATER STATE REVOLVING FUND (DWSRF) - TRANSFER OF AUTHORITY

SEC Presentation

Good morning. I'm Adele Basham, Supervisor of the Drinking Water State Revolving Fund

Petition number 2004-23 is proposed changes to the regulations that govern the Drinking Water State Revolving Fund. These proposed regulations have been drafted by LCB as permanent regulation. The 2003 Legislature passed legislation, which transferred the Drinking Water State Revolving Fund from the Health Division to NDEP. Since this is the first time the Environmental Commission has been asked to approve regulation revisions related to the Drinking Water State Revolving Fund, I'm going to give you a very brief overview of the program before discussing the proposed revisions in front of you today.

The 1996 Amendments to the Safe Drinking Water Act authorized the Drinking Water State Revolving Fund to assist drinking water systems finance the costs of infrastructure improvements. In 1997, the Nevada State Legislature passed legislation, which authorized the State Health Division to develop, implement and administer the DWSRF program in Nevada. The DWSRF provides low-interest loans to water systems for infrastructure projects that address public health. Loans can be made to both publicly and privately owned water systems. The loan term is for 20 years or less and interest rates have averaged 3.5% or less in recent years.

Nevada receives an annual capitalization grant from EPA of approximately \$8 million. The state is required to provide 20% match to the grant. Nevada provides the match through the sale of state bonds. The program repays the debt on the state bonds from the interest collected on the DWSRF loans. To date, Nevada has received approximately \$64 million in grant funds, of that approximately \$58 million has been loaned out for infrastructure projects. As the loans are repaid, the fund continues to grow.

Annually, as part of the grant application, the state is required to develop an intended use plan, which spells out how the state is proposing to spend the funds. Included in the intended use plan is a priority list of projects. A project must be on the priority list before it can receive a loan. Both the Intended Use Plan and the Priority List go out for public comment. A public workshop is held on the priority list. The Board for Financing Water Projects approves both the priority list and loan commitments.

The proposed revisions to NAC 445A.6751 through NAC 445A.67644 in front of you today make regulatory changes needed to reflect the change in administration of the program from the Health Division to NDEP. The proposed revisions also include mostly minor procedural changes that are intended to streamline administration of the program.

The regulations that currently are in place were written shortly after Nevada started the program. The program now has been operating for approximately 6 years and we have learned which parts of the regulations work and which parts don't work so well.

In early June 2004, we held three public workshops on the proposed revisions (one in Elko, one in Las Vegas and one in Carson City). No one attended the workshop in Elko. The attendees in Las Vegas supported the proposed changes. At the Carson City workshop, the Division received substantive comments. These comments were incorporated into the draft revisions in front of you today.

First there are a few proposed changes to definitions:

- Delete "Board" (Board of Health)

- Add “Commission (Environmental Commission)
- Modify “Environmental Assessment” definition to state that the assessment is prepared by applicant not division
- The “MHI” definition currently states that median household income as determined by U.S. Census. At the Carson City workshop, we received significant comments on using the Census to determine median household income and the fact that the U.S. Census, which is produced only every ten years, is quickly out of date. To address these comments, we are proposing to add a provision to the “MHI” definition that allows the Division to determine an alternative method to the U.S. Census. This alternative method would have to be identified in the annual Intended Use Plan.

The following three proposed changes occur in several places in the regulations:

- First, change references from bureau (BHPS) to division
- Second, use consistent terminology for median household income (MHI)
- And third, we are proposing to combine the “Environmental Information Document” and “Environmental Assessment”. The existing regulations require two documents. There does not appear to be any reason why two separate documents are needed so we are proposing to simplify the requirement by combining the environmental information document with the environmental assessment

As you can see from the proposed regulation in your binder, there are a lot of proposed changes. Most of these changes are minor procedural simplifications intended to provide flexibility for both the state and the loan applicants. Rather than going through each change, I would like to highlight what I consider to be the substantive changes, if that is acceptable to the Commission....

Compliance with the Health Division regulations for design and construction (such as minimum pressure and storage requirements) is not specifically spelled out in the DWSRF eligibility section of the regulations; however, compliance with state regulations is often why projects are needed. So we are proposing to add replacement of aging infrastructure needed to comply with state regulations to eligible projects (section 13, NAC 445A.67561, #5, p.7)

Next, the definition of “Disadvantaged Community” currently requires that the water system median household income be 80% or less than the county median household income. We are proposing to change the definition to water system MHI 80% of state MHI (rather than the county)(section 13, NAC 445A.67561, #9, p.8). Since *DWSRF is a statewide program, we feel it is more appropriate to compare local income to the state as a whole rather than the county.*

In order for a project to be considered for a loan, the project must be on the priority list. To be included on the priority list, the water system must submit a pre-application form, which is a two-page form with basic information. Currently, the regulations require that the Division integrate water projects that are on the existing priority list with new projects from the annual solicitation for projects. Adding new projects to the existing list has resulted in many projects staying on the priority list year after year, with the projects never making any progress in terms of being ready to proceed with a loan application. The Division is proposing a change that would require projects submit a written request annually to stay on the list to ensure all projects on the list are still viable (section 16 & 17, NAC 445A.67566-7, p.11, 13). Projects would no longer be automatically carried over from year to year. It should be noted that the current practice of adding new projects throughout the year if the Division receives preapplications will continue.

The regulations specify how projects on the priority list are to be ranked based on health concerns. We are proposing to add projects which address demonstrated illness, significant noncompliance, court-ordered compliance and state issued boil water order to the highest rank group of projects since these are the most serious and immediate health concerns (NAC 445A.67569, b.1, p.15). We are also proposing to add language that additional factors may be considered in ranking. If additional factors are utilized, these factors must be identified in the Intended Use Plan. This change gives the Division the flexibility to address special needs as they arise, such as arsenic treatment, but still provides for public comment on the additional factors through the Intended Use Plan.

Also, in the priority ranking we are proposing to revise the point structure so that an equal value is assigned for any violation of a drinking water standard regardless of contaminant (NAC 445A.67569, section 19, b.2, p.16-17). *Currently, the regulations specify different scores for various contaminants. However, all drinking water standards are based on health concerns and we believe should have an equal value. In addition, this change will allow us to accommodate new drinking water standards when they are established without having to revise the DWSRF regulations.*

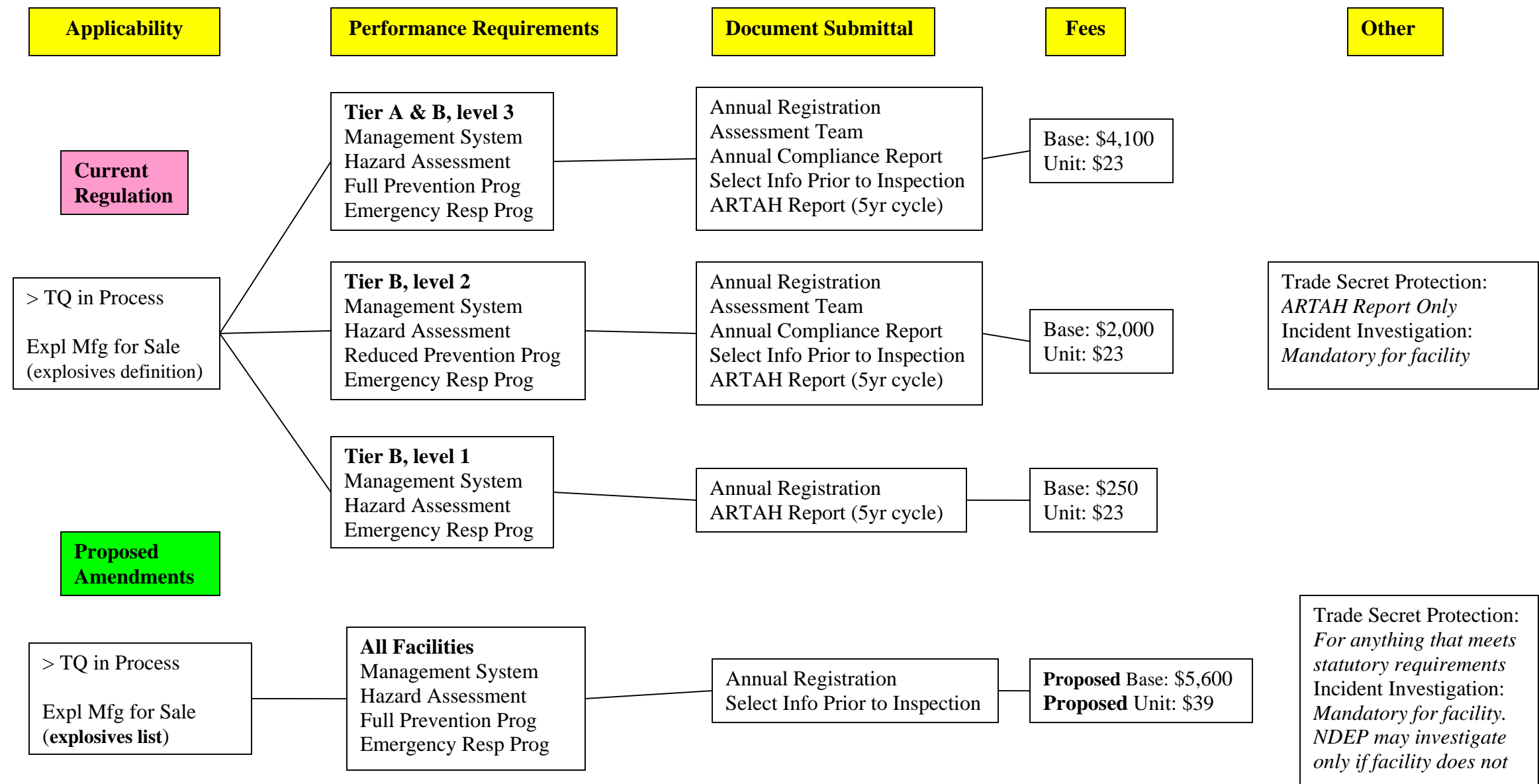
Next, we are proposing language (NAC 445A.67581, section 27, p.26) to allow the Division to accept an environmental review that the applicant has already completed for another agency, if the environmental review complies with the requirements of the DWSRF regulations. *The DWSRF does not wish to require an applicant to duplicate work if at all possible. Also, there is existing language in the regulations that states projects that have received a USEPA permit from the PUC are exempt from environmental review requirements. This language does not comply with USEPA requirements and cannot be approved by USEPA. We are proposing this language be removed.*

As I mentioned earlier, we are proposing to combine the requirements for environmental information document and environmental assessment into one required document.

Next, we are proposing to add a requirement to loan application to submit five years of financial projections including revenues and expenses. In practice, we already have been requiring this from privately owned water systems because not only do we need to look at an applicant's financial history but also future projections to determine whether they are credit worthy.

Lastly, we are proposing to move the requirement to submit plans from loan application and award of loan contract to the notice to proceed with construction. The loan frequently finances the design work so plans are often not available at the loan application stage. Only after the loan has been awarded is final design work completed.

This concludes my remarks on the proposed changes that in my opinion are more substantive in nature. Any questions?



CAPP Regulation: Current versus Proposed

State of Nevada Division of Environmental Protection

Chemical Accident Prevention Program

Presented to:
State Environmental
Commission

By: Mark W. Zusy, P.E.
CAPP Supervisor

November 30, 2004



Presentation Outline

- ◆ **CAPP Overview**
- ◆ **Purpose of Proposed Modifications**
- ◆ **Scope of Proposed Modifications**
- ◆ **Regulation Development & Outreach**
- ◆ **Regulation Review**

CAPP Proposed Regulations

CAPP Overview

◆ **Audit Program**

- ◆ Implement accident prevention program
 - Evaluate design info, process hazards
 - Develop procedures, training program
 - Develop maintenance & incident investigation procedures
- ◆ Implement coordinated emergency response program

◆ **Permit Program**

- ◆ New processes required to obtain permit
- ◆ CAPP verifies facility has accident prevention & emergency response programs developed

CAPP Proposed Regulations

Purpose of Proposed Modifications

- ◆ **Implement 2003 Statutory Mandates**
 - ◆ Some require regulatory amendments
 - ◆ Overall objective: improve CAPP effectiveness
- ◆ **Adjust Fee Schedule**

CAPP Proposed Regulations

Scope of Proposed Modifications

- ◆ Reduce Paperwork
- ◆ Increase Fees
- ◆ Streamline Program Requirements
- ◆ Make program improvements to permitting, accident prevention and emergency response programs
- ◆ Miscellaneous other improvements

CAPP Proposed Regulations

Regulation Development & Outreach

- ◆ **Solicited recommendations from regulated community after statute amended in 2003**
- ◆ **Proposed regulation & workshop notice available on CAPP website May, 2004**
- ◆ **Workshop notices mailed to over 140**
 - ◆ Held in May, 2004
 - ◆ Attendance: CC-11; LV-11; BM-4
- ◆ **Comments received & considered**
 - ◆ 13 respondents
 - ◆ Will address with regulation section

CAPP Proposed Regulations

Regulation Review –

Confidentiality (New Sec. 8, pg 2)

- ◆ Expands ability to protect trade secret info

Incident Investigation (New Sec. 9, pg 3)

- ◆ Provides NDEP authority to conduct investigations and recover cost upon failure of facility to investigate
- ◆ Facility is advised and afforded opportunity to investigate in advance of NDEP investigation

CAPP Proposed Regulations

Regulation Review –

Applicability (Sec. 24-25, pg 10)

- ◆ Exceed TQ on HHS list, manufacture explosive on explosive list, OR two releases of HHS
- ◆ Replaces a system of multiple program tiers and program levels
- ◆ Mixtures of HHS are addressed as well

CAPP Proposed Regulations

Regulation Review –

Substance Lists (Sec. 26, pg 14 & 24)

◆ **HHS list**

- ◆ Combined statutory list and two regulatory lists
- ◆ Kept all chemicals and took lowest TQ

◆ **Explosive list**

- ◆ Adopted DOT-listed explosives
- ◆ Explosives must be specifically labeled for transportation, so there is no question of applicability
- ◆ Includes Divisions 1.1 through 1.5

CAPP Proposed Regulations

Regulation Review –

Performance (Sec. 27, pg 24)

- ◆ **All facilities will perform to the same criteria**
- ◆ **Requirements**
 - ◆ Register with NDEP
 - ◆ Pay fees, conduct hazard assessment
 - ◆ Develop prevention program, emergency response program, management system
 - ◆ Permit new processes

CAPP Proposed Regulations

Regulation Review –

Fees (Sec. 28-29, pg 25)

- ◆ **Last annual fee increase approved in 2000**
 - ◆ Phased-in over 2 years
 - ◆ Covered 2 Eng & ½ Clerical
 - ◆ 3rd Eng position covered by permitting and resource sharing
- ◆ **Propose increase in annual fee**
 - ◆ Since last increase approved, engineering series salary adjustment of 24%
 - ◆ Annual fee must also cover ½ engineering position for program supervision & management
 - ◆ To cover staffing requirements during permitting, use resource sharing within bureau
 - ◆ Escalate in 2007 & 2009 to cover anticipated COLA

CAPP Proposed Regulations

Regulation Review –

Fees (continued, Sec. 28-29, pg 25)

◆ **Facility Comment**

- ◆ Concern: 1. Larger facilities want fee capping mechanism 2. Paying for extra railcars on property unfair 3. Consider fee for service
- ◆ Response: 1. Proposed 2. Unit fee encourages minimizing inventory 3. Current scheme distributes cost & is consistent with statute

◆ **Also proposing hourly rate increase**

- ◆ Hourly charges for permitting & new incident investigation provision (sec. 9, pg 3 & sec. 42, pg 45)

CAPP Proposed Regulations

Regulation Review –

Annual Registration (Sec. 44-47, pg 48)

- ◆ **Provide NDEP with information critical to administration and oversight of program**
 - ◆ Hazardous substance quantities
 - ◆ Accident information (*formerly in annual compliance report*)
 - ◆ Hazard abatement measure status (*formerly in assessment & annual compliance reports*)
- ◆ Removes OCA information

CAPP Proposed Regulations

Regulation Review –

Accident Prevention Program (Sec. 54-65, pg 65)

- ◆ **Most comprehensive program to be followed by all facilities**

CAPP Proposed Regulations

Regulation Review –

Emergency Response Program (Sec. 66-67, pg 84)

- ◆ **Response coordination is defined**

- ◆ Document meeting(s) & responder comments

- ◆ Agree upon update frequency

- ◆ **Facility comment:**

- ◆ Concern: With original concept of obtaining responder concurrence with plan

- ◆ Response: Meet with responder and document concerns

CAPP Proposed Regulations

Regulation Review –

Assessment Report (deleted, pg 134-147)

- ◆ **Facility's 5-year report replaced as indicated below**
 - ◆ Annual inspections by NDEP of specific safety programs with comprehensive documentation
 - ◆ Annual reporting by facility of progress with hazard abatement measures and annual follow-up by NDEP
 - ◆ Additionally - facility still obligated to conduct self-compliance audit at 3-year interval

CAPP Proposed Regulations

Regulation Review –

Assessment Team (deleted, pg 148-149)

- ◆ **Statutory requirement for team composition & pre-approval was deleted**
- ◆ **There is a regulatory requirement for team composition (*sect. 55, pg 68*)**

CAPP Proposed Regulations

Regulation Review –

Annual Compliance Report (deleted, pg 152)

- ◆ **Information gathered in this report has been incorporated into the annual registration (sect. 44-47, pg 48)**

CAPP Proposed Regulations

Regulation Review –

Management Systems (Sec. 75, pg 92)

- ◆ Facility currently defines person or team responsible for CAPP
- ◆ Amend to require implementation plan for each program element and to require a document control system

CAPP Proposed Regulations

Regulation Review –

Inspections (Sec. 76, pg 93)

- ◆ Requires annual inspections
- ◆ Defines scope of inspections
- ◆ Defines scope of inspection report
- ◆ Codifies actions already performed by NDEP

ORMAT



**Comments Regarding
Revised Proposed Regulation of the State Environmental Commission**

**LCB File No. R137-04
Petition 3004-25**

Submitted to
State Environmental Commission
November 30, 2004

Submitted by
Ormat Nevada, Inc.

Ormat Nevada, Inc.

980 Greg Street ● Sparks, NV 89431 ● Tel: (775)356-9029 ● Fax: (775)356-9039

Chairman and Member of the Commission:

Ormat has reviewed the proposed changes to NAC 459 regulation of highly hazardous substance and explosives. We wish to make the following comments:

1. The proposed revision eliminates the two tier levels of threshold quantities, Tier A and Tier B program with its three sub-program levels. Senate Bill 127 does not address or mandate such a program change.

- The Tier B threshold quantities were based upon the federally established Clean Air Act Section 112 (r) which the CAPP program was implemented to regulate.
- Tier B's three sub-programs allowed for categorization of facilities based upon the amount of hazardous material on site, the potential impact to public and environmental receptors, and the facility's safety record.
- A Tier B, Program Level 1 facility had a clean safety record for the previous five years and had no public or sensitive environmental receptor within its worst case release area.

Quoting the EPA's *Guide to the Accidental Release Prevention Requirements (Section 112 (r)) of the Clean Air Act*, 1997 the three sub-program levels are described as:

- *Program 1 requirements apply to processes for which a worst-case release, as evaluated in the hazard assessment, would not affect the public. These are sources or processes that have not had an accidental release that caused serious offsite consequences. Remotely located sources and process using listed flammables are primarily those eligible for this program.*
- *Program 2 requirements apply to less complex operations that do not involve chemical processing (e.g. retailers, propane users, non-chemical manufacturers, and other processes not regulated under OSHA's PSM Standard).*
- *Program 3 requirements apply to higher risk, complex chemical processing operations and to processes already subject to the OSHA PSM.*

Eliminating the Tier B of Nevada's CAPP requires remote facilities to comply with elements of CAPP which are designed to protect the public. The Clean Air Act defines the public as "any person except employees or contractors at the stationary source." (40 CFR 68.3) This designation is important because it focuses the CAPP regulation on the facility's possible impact outside the workplace.

2. In the workplace the State's Occupational Safety and Health Administration (OSHA) under the Williams-Stieger Occupational Safety and Health Act of 1970 is the responsible party for insuring employee and contractor safety. The designated Nevada OSHA office, Division of Industrial Relations / OSHES has been mandated "to provide safe and healthful working conditions for every employee through a variety of programs and initiatives including enforcement of standards through effective inspections" (Nevada Operations Manual (NOM), April 2001).

- The proposed regulatory changes will duplicate the efforts of Nevada OSHES and take the Nevada CAPP scope beyond that defined within the Clean Air Act.

3. The proposed regulations include a revision of the table of threshold quantities (TQ), NAC 459.9533. The original table Tier B chemical TQ values were derived from the CAA Section 112 (r). We were unable to determine where the Tier A TQ values were derived from but the amount is always a smaller fraction of the CAA TQ, as little as 3% of the CAA amount. In the proposed revision, where there were no Tier A values, Tier B values are used. However, where Tier A values existed, the lower Tier A value is used as the TQ. An example from the beginning of the table, edited to provide proposed changes information, is attached.

- The result of this shuffling of numbers is that facilities having a good safety record and using small amounts of chemicals will now be subject to CAPP where they were not before. This is contrary to the Divisions announcement (<http://ndep.nv.gov/bwm/cappnew.htm>) that "This action does not add regulated substances to the program, nor does it increase the size of the regulated community."

4. The proposed regulations include increases for both annual fees and construction permit fees.

- Small quantity users and remote facilities which will be newly regulated under CAPP will be subject to these new fees. Remote Tier B level one facilities pay 5 to 10% in annual fees that a Tier B level two and three facility pays.
 - Example: Ormat's remote Tier B level 1 facility pays approximately \$250 in annual fees. Our urban Tier B level 3 facility pays \$4,100 annually and this amount will rise by approximately 25% with the proposed increases. The remote facility will subject to this higher fee.
- Remote facilities whose worst case release scenario meets the CAA 40 CFR 68.10(2) regulation: "The distance to a toxic or flammable end point for a worst case release assessment conducted (using EPA defined program) is less than the distance to the nearest public receptor." and facilities using smaller quantities of chemicals subject to the revision of the chemicals list table in NAC 459.9533 have will now be subject to construction permitting under CAPP.
 - The CAPP construction permitting process is quite complicated and can be quite expensive. A facility process which has 1 to 5 piping and instrument drawings can have a permitting fee of up to \$40,000 greater than 5 P&IDs can run \$50,000 with additional costs for additional diagrams.
 - Example: a geothermal binary unit which has no chemical processing components and is purchased as a module unit can have more than 10 P&IDs associated with the construction.

Ormat asks the Commission to consider the following suggestions:

1. NDEP should retain the two tiered CAPP program or revise the program in such a way that remote facilities which cannot impact the public or sensitive environments with accidental releases are not subject to the level of regulation required for urban center facilities.
2. The table of threshold quantities in NAC 459.9533 should adhere to the federal CAA Section 112 (r) thresholds so as not to unnecessarily broaden the regulated community under CAPP with small quantity chemical users.
3. Small quantity and remote facilities which could not impact the public or sensitive environments with accidental releases should not be subject to the same fees as urban area facilities.

It is understood that much of the proposed changes are geared toward to greater control of processes which use explosives. We understand and support the need for this regulation which was the focus of Senate Bill 127. One possible way of handling this area of hazardous materials would be to separate its regulation, much as is done with radioactive materials and equipment, within the NAC 459 chapter, allowing for greater regulation, fee adjustments and lower thresholds where justified without the comprehensive program changes as proposed.

NAC 459.9533

Sample of Threshold Table with Columns added to illustrate proposed changes in TQ

Illustrates reduction in Threshold Quantities below that established by the Clean Air Act Section 112(r) in the proposed revision.

Where Tier B was eliminated, Tier A thresholds quantities are used. Result will place more small quantity users under CAPP.

Chemical Name	Alternate Chemical Name	Mixture Description	CAS Number	Tier A Threshold Quantity (lbs)	Tier B Threshold Quantity (lbs)	Illustrative Values		Two Release Quantity (lbs)	Two Release Source note 1	Tox(T), Flam(F) or Expl(E)	Toxic Endpoint (mg/L)
						Revised Legislation Threshold Quantity	Percent change				
Acetaldehyde	Ethanal		75-07-0	2,500	10,000	2,500	(75.00)	1,000	1	F	
Acetylene	Ethyne		74-86-2		10,000	10,000	0.00			F	
Acrolein	2-Propenal		107-02-8	150	5,000	150	(97.00)	1	1 & 2	T	0.0011
Acrylonitrile	2-Propenenitrile		107-13-1		20,000	20,000	0.00			T	0.076
Acrylyl chloride	2-Propenoyl chloride		814-68-6	250	5,000	250	(95.00)	100	2	T	0.0009
Alkylaluminum s				5,000		5,000	0.00	50*	3		
Allyl alcohol	2-Propen-1-ol		107-18-6		15,000	15,000	0.00			T	0.036
Allyl chloride	3-chloropropene		107-05-1	1,000		1,000	0.00	100	3		
Allylamine	2-Propen-1-amine		107-11-9	1,000	10,000	1,000	(90.00)	500	2	T	0.0032
Ammonia	Anhydrous Ammonia	Anhydrous	7664-41-7	5,000	10,000	5,000	(50.00)	100	1 & 2	T	0.14
Ammonia	Ammonia solution	20wt% or greater	7664-41-7		20,000	20,000	0.00			T	0.14
Ammonia	Ammonium hydroxide	concentration greater than 44% ammonia by weight	7664-41-7	10,000		10,000	0.00	100	3		
Ammonium perchlorate			7790-98-9	7,500		7,500	0.00	75*	3		
Ammonium permanganate			7787-36-2	7,500		7,500	0.00	75*	3		
Arsenous trichloride			7784-34-1		15,000	15,000	0.00			T	0.01
Arsine	Arsenic Hydride		7784-42-1	100	1,000	100	(90.00)	10	3	T	0.0019
bis(Chloromethyl) Ether	Chloromethyl Ether		542-88-1	100	1,000	100	(90.00)	10	1 & 2	T	0.00025
Boron trichloride			10294-34-5	2,500	5,000	2,500	(50.00)	100	3	T	0.01
Boron trifluoride			7727-37-7	250	5,000	250	(95.00)	25	3	T	0.028
Boron trifluoride w/Methyl Ether		1:1 ratio	353-42-4		15,000	15,000	0.00			T	0.023
Bromine			7726-95-6	1,500	10,000	1,500	(85.00)	500	2	T	0.0065
Bromine chloride			13863-41-7	1,500		1,500	0.00	10	3		
Bromine pentafluoride			7789-30-2	2,500		2,500	0.00	100	3		